

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DWYER, III; BETH DWYER;  
THERMAL ENERGY SYSTEMS, INC.;  
AND GEO ENERGY SOURCE, INC.,  
Appellants,

vs.

PAT DWYER SELF; DONALD E. SELF,  
JR.; AND "4" MAC, INC.,

Respondents.

BARBARA BURRER; PAT DWYER  
SELF; "4" MAC, INC.; AND DONALD E.  
SELF, JR.,

Appellants,

vs.

JAMES DWYER, III; BETH DWYER;  
THERMAL ENERGY SYSTEMS, INC.;  
AND GEO ENERGY SYSTEMS, INC.,

Respondents.

No. 43862

**FILED**

JUL 12 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ribaud*  
CHIEF DEPUTY CLERK

No. 44043

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court judgment and post-judgment orders in a shareholder dispute. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Pat Dwyer Self, James (Jim) Dwyer, and Elizabeth (Beth) Dwyer, all siblings, incorporated Thermal Energy Systems (TES) and Geo Energy Systems (GEO) in 1997 in Las Vegas. With Beth's help, Jim, Pat, and Don Self, Pat's husband, purchased a house as joint tenants in August 1997 to be used as their residence and business office. Failing family relations between Beth, Pat, Don, and Jim resulted in (1) Beth leaving Las Vegas and active involvement in TES in March 1999, (2) Pat leaving TES and GEO and starting "4" Mac, a business in substantially the same field as TES; (3) negotiations for Jim to purchase Pat's and Don's share of the

house; and (4) the current lawsuit between the siblings, resulting in a judicial sale of the house. After a non-jury trial in June 2004, the district court found Jim and Pat liable for breach of fiduciary duty, that Beth did not have an interest in the property, and ordered the property sold. We assume the parties know the facts and do not further recite them.

On appeal, Jim, Beth, TES, and GEO allege that substantial evidence does not support the district court's decisions regarding the house and that the district court erred when it ordered the house sold. Pat, Don, and Barbara allege that the district court erred when it refused to grant them attorney fees. We disagree with the parties' contentions and affirm the district court's judgment.

This court may only set aside the district court's findings of fact when the findings are clearly erroneous and not based on substantial evidence.<sup>1</sup> "Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion.""<sup>2</sup> "Where . . . 'there is conflicting evidence, this court is not free to weigh the evidence, and all inferences must be drawn in favor of the prevailing party.'"<sup>3</sup> After having

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<sup>1</sup>NRC 52(a); Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003); Beverly Enterprises v. Globe Land Corp., 90 Nev. 363, 365, 526 P.2d 1179, 1180 (1974).

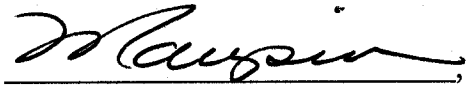
<sup>2</sup>Taylor v. Thunder, 116 Nev. 968, 974, 13 P.3d 43, 46 (2000) (quoting Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation omitted)))).

<sup>3</sup>Id. (quoting Smith v. Timm, 96 Nev. 197, 202, 606 P.2d 530, 532 (1980)).


reviewed the facts of this case, we conclude that substantial evidence supports the district court's judgment.

Accordingly, we


ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Valorie Vega, District Judge  
Law Office of Daniel Marks  
Michael R. Pontoni  
Clark County Clerk